**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH**
**AT HYDERABAD**

(Special Original Jurisdiction)

FRIDAY, THE FIRST DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

**THE HON'BLE DR JUSTICE G.YETHIRAJULU**

**WRIT PETITION NO : 16791 of 2004**

Between:

Diocesan Educational Society, Kurnool, its Chairman

Most Rev. G. Johannes, S/o. Shri Augustine, R/o. Bishop Compound, Nandyal Road, Kurnool.

..... PETITIONER

AND

1. Government of Andhra Pradesh, Rep by its Secretary

to the Government, Education, Secretariat, Hyderabad.
2. Regional Joint Director, Intermediate Education, Cuddapah,

Cuddapah District.
3. P. Balaraja Reddy, (Earst-while Jr. Lecturer in Chemistry,
St. Mary's Junior College, Nandyal Road, Kurnool)

R/o.H.No. 7/897, Syndicate Bank Colony,
Behind Bishop's House, B-Camp, Kurnool.
4. Shri Anthony Raju, (Earst-while Jr. Lecturer in English,
St. Mary's Junior College, Nandyal Road, Kurnool)

R/o. H.NO. 18/636, Gaffoor Nagar,
B-Camp, Kurnool.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a WRIT OF MANDAMUS or any other appropriate writ, order or direction in the nature of such a writ declaring the action of the 1st respondent in not passing orders on the application for stay filed by the petitioner on 13-9-2004 along with the Appeal

against the order of the 2nd respondent in his proceedings Rc.No. 2579/B3/2003 dated 12-8-2004 in the proceedings of the 2nd Respondent, in Rc.No. 2579/B3/2003 pending disposal of the Appeal filed by the petitioner against the said order and pass

Counsel for the Petitioner:MR.N.V.S.R.GOPALAKRISHNAMA CHARI

Counsel for the Respondent Nos.1 and 2: GP FOR EDUCATION

Counsel for the Respondent Nos.3 and 4: MR.P. INNAYYA REDDY

The Court made the following **ORDER**:

The petitioner approached this Court through this Writ Petition seeking to declare that the action of the first respondent in not passing the orders on the application for stay filed by him on 13-09-2004 along with the appeal against the order of the 2nd respondent dated 12-08-2004, as arbitrary, illegal and ultra virus. The petitioner is an Educational Society. It passed an order of removal against two of its lecturers on 09-04-2002. Those two lecturers preferred appeals before the second respondent and those appeals were allowed by the second respondent through the order dated 12-08-2004. The petitioner being aggrieved by the order of the second respondent, preferred an appeal before the first respondent/Government challenging its validity and legality and the appeal is pending with the government. The petitioner contends that along with the said appeal, he filed an application for stay of the order of second respondent/Regional Joint Director and the grievance of the petitioner is that the first respondent failed to exercise the jurisdiction vested in it under Section 81 of the A.P. Education Act, 1982. Therefore, he approached this Court through this Writ Petition, seeking to direct the first respondent to take up the stay petition for hearing and to pass appropriate orders according to law.

The respondents 3 and 4 vehemently opposed the Writ Petition by contending that since the petitioner availed the alternative remedy of appeal before the first respondent, cannot run the parallel proceeding through this writ petition, therefore, the writ petition has to be dismissed as not maintainable under law.

The learned Counsel for the petitioner represented that the petitioner is not questioning the validity or otherwise of the order of the second respondent through this writ petition and he has already questioned the order of the second respondent through an appeal before the first respondent. He further submits that his grievance is only regarding the first respondent not exercising its jurisdiction vested under the

statute and as the first respondent failed to take up the stay petition filed by him along with the appeal for hearing, it necessitated him to approach this Court to invoke the jurisdiction under Article 226 of the Constitution of India.

Since the petitioner is not questioning the order of the second respondent through this writ petition, it cannot be treated as a parallel proceeding to the appeal preferred by the first respondent. The first respondent being an appellate authority under the statute is expected to pay sufficient attention regarding the grievance of a party who approached it, and in view of the urgency expressed by a party, is expected to hear the matter and pass appropriate orders by exercising its discretion according to the rules.

The learned Counsel for the respondents 3 and 4 regarding the maintainability of the writ petition under Article 226 of the Constitution of India when a party availed the alternative remedy provided under the relevant statute has brought to the notice of this court the following decisions:

1. “K.S.Rashid and Son Vs. Income tax

Investigation Commission and others”[1],

2. “Sheo Nath Singh Vs. Assistant Commissioner

of Income-tax(Central Range) Calcutta and Others”[2]

3. “Procter and Gamble India Ltd., Vs. Union of India”[3]

There is no dispute regarding the proposition of law laid down by the Hon’ble Supreme Court and the High Courts.

Having regard to the above facts and circumstances, the first respondent is directed to take up the stay petition filed by the petitioner along with the appeal under Section 81 of the A.P. Education Act, 1982 for hearing and pass appropriate orders by exercising its discretion according to the relevant provisions under the Act within a reasonable time.

The Writ Petition is accordingly disposed of. No order as to costs.

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Dr. G. Yethirajulu, J.

Dt:1st October, 2004.

NOTE: Copy by today.

(B/O)

RNS

To

1. Government of Andhra Pradesh, Rep by its Secretary

to the Government, Education, Secretariat, Hyderabad.

2. Regional Joint Director, Intermediate Education, Cuddapah,

Cuddapah District.

3. Two CCs to G.P. for Education, High Court

of A.P.,Hyderabad.(OUT)

4. Two CD copies.